

Decision 03-10-025          October 2, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

The City of St. Helena,

Complainant,

vs.

Napa Valley Wine Train, Inc.,

Defendant.

Case 99-01-020  
(Filed January 14, 1999)

**ORDER DENYING REHEARING OF DECISION 99-08-018**

In Decision (“D.”) 99-08-018, the Commission dismissed the City of St. Helena’s (“St.Helena’s”) complaint against the Napa Valley Wine Train, Inc. (“Wine Train”), which raised the issue of the public utility status of the Wine Train’s passenger service. The Commission also denied the St. Helena’s motion for an order to show cause.

On September 3, 1999, St. Helena filed an application for rehearing of D.99-08-018, contending that the decision erred in finding that St. Helena was seeking an advisory opinion. On September 15, 1999, the Wine Train filed a response to St. Helena’s application.

We have reviewed each and every allegation of error raised in the application for rehearing and are of the opinion that St. Helena has not demonstrated good cause for rehearing.

## **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

This proceeding began on January 14, 1999,<sup>1</sup> when St. Helena filed a complaint against the Wine Train alleging that (1) the Wine Train was not operating as a public utility within the meaning of Public Utilities Code section 216, and (2) even if the Wine Train were to operate the manner authorized by the Commission in D.96-06-060 and D.96-11-024, the Wine Train would not be a public utility within the meaning of Public Utilities Code section 216.<sup>2</sup> On March 18, 1999, St. Helena filed a motion for an order to show cause why the Wine Train should not cease and desist from providing rail services. According to St. Helena, the motion was in response to Wine Train's answer to the complaint, in which the Wine Train claimed to be a public utility, but also admitted that its business was in violation of the several sections of the public utilities code.

In D.99-08-018, the Commission denied St. Helena's motion for an order to show cause and dismissed St. Helena's complaint. Regarding the complaint, the Commission reasoned that St. Helena was seeking an advisory opinion because the only relief requested was a restatement of the Commission's jurisdictional authority over the Wine Train. The decision relies on Public Utilities Code section 1702, which governs the content of complaints. Section 1702 provides that any person may file a complaint

setting forth any act or thing done or omitted to be done by any public utility . . . , in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.

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<sup>1</sup> For a complete discussion of the background of this case and the related proceeding, C.88-03-016, see D.03-01-042 at pp. 2-10.

<sup>2</sup> Section 216 defines "public utility" as every common carrier, . . . where the service is performed for, or the commodity is delivered to, the public or any portion thereof."

The decision also relies on the Commission's policy against issuing advisory opinions. (See, e.g., Re Southern California Gas Company [D.98-03-038] (1998) 78 Cal.P.U.C.2d 725, 727 [Commission does not issue advisory opinions in the absence of a case or controversy, unless presented with extraordinary circumstances].) The decision concludes that St. Helena has not presented the Commission with any case or controversy, nor with any extraordinary circumstances that would justify issuing an advisory opinion.

Finally, the decision finds that St. Helena is seeking to relitigate D.96-06-060 and D.96-11-024. The decision states that if St. Helena believes it has grounds to file a petition for modification, it could do so under Rule 47 of the Commission Rules of Practice and Procedure. (D.99-08-018 at pp. 3-4.)

On September 3, 1999, St. Helena filed the instant application for rehearing.<sup>3</sup>

## II. DISCUSSION

St. Helena alleges that the decision errs in finding that St. Helena is seeking an advisory opinion. Rather, St. Helena asserts that the relief it is seeking is in the nature of a declaratory judgment, which is within the authority of the Commission.

“‘The fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject.’ [Citation.]” (City of Cotati v. Cashman (2002) 29 Cal.4<sup>th</sup> 69, 79. Original emphasis. See also Code Civ. Proc. § 1060.) The controversy that is the subject of the relief “must be of a character that admits of specific and conclusive relief by judgment within the field of judicial determination, as distinguished from an advisory opinion upon a particular or hypothetical state of facts.” (Bame v. City of Del Mar (2001) 86 Cal.App.4<sup>th</sup>

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<sup>3</sup> Soon after, on September 16, 1999, St. Helena filed a petition for modification of D.96-11-024 in C.88-03-016. In that petition, St. Helena raised the same jurisdictional issues that it raised in its complaint. Thus, the instant application was held in abeyance pending resolution of applications for rehearing filed in C.88-03-016.

1346.) Whether a determination is proper in a declaratory relief action is within the discretion of the trial court or agency, and such determination will not be disturbed on appeal unless it is clearly shown that such discretion was abused. (Abbate v. County of Santa Clara (2001) 91 Cal.App.4<sup>th</sup> 1231, 1239; see also Application Group, Inc. v. Hunter Group, Inc. (1998) 61 Cal.App.4<sup>th</sup> 881, 892-893.)

St. Helena contends that the subject of its complaint is an actual controversy relating to the legal rights and duties of the respective parties; namely, whether the Wine Train is a public utility with the authority to preempt local authorities. More specifically, the conflict centers on whether or not St. Helena is required to permit the Wine Train to build a station in St. Helena.

First, as pointed out by the Wine Train, the Commission's standards for issuing declaratory decisions are similar to those for advisory opinions. As a general rule, the Commission does not grant declaratory relief unless circumstances justify a departure from the general rule. (Re San Diego Gas and Electric Co. [D.91-11-045] (1991) 1991 Cal. PUC LEXIS 650.)

Second, while there may be an actual controversy between the parties, it is not clear that the Wine Train's status as a public utility is a proper subject for declaratory relief. As the Commission concluded in D.99-08-018, St. Helena's complaint actually seeks to relitigate D.96-06-060 and D.96-11-024, which have long been final.

In any event, the substance of the issues raised by St. Helena in this complaint has now been addressed by the Commission in D.01-06-034 and D.03-01-042. Because we have determined that, based on the record in C.88-03-016, the Wine Train is a public utility, the issues raised in the instance case are moot. Moreover, as we stated in D.03-01-042, St. Helena has the opportunity to file a statement of issues for the Commission's consideration in C.88-03-016. (D.03-01-042 at p. 20.)

### **III. CONCLUSION**

For all of the foregoing reasons, we have determined that St. Helena's application for rehearing should be denied.

Therefore **IT IS ORDERED** that:

1. St. Helena's application for rehearing of D. 99-08-018 is denied.
2. This proceeding is closed.

This order is effective today.

Dated October 2, 2003 at San Francisco, California.

CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
Commissioners

President Peevey reserves the right to file a dissent.

/s/ MICHAEL R. PEEVEY  
President

Commissioner Kennedy reserves the right to file a dissent.

/s/ SUSAN P. KENNEDY  
Commissioner

C.99-01-020

D.03-10-025

Commissioners Susan P. Kennedy and Michael R. Peevey, dissenting:

We are voting no on these items because we believe the Commission has no business regulating the Napa Valley Wine Train. And that's because we're in the business of regulating transportation, not amusement park rides.

The Napa Valley Wine Train is entertainment; it is recreation; it is a tourist attraction -- it is not real point-to-point transportation. Customers of the Napa Valley Wine Train travel from Point A to Point A, not from Point A to Point B. Customers never get off the train, from the moment they board until the moment they disembark. And when they disembark, they've enjoyed a meal and some beautiful California scenery, and are at exactly the same spot where they began their ride a few hours earlier.

Much like our jurisdiction over hot air balloons, our jurisdiction over the Napa Valley Wine Train defies common sense. In 1990, legislation was enacted (AB 4370-Hansen) amending the Public Resources Code to designate this Commission as lead agency for the preparation of an environmental impact report on the proposed Wine Train project. This measure clearly refrained from designating the Wine Train as a public utility. We completed the EIR and thereby facilitated the construction of this tourist attraction. Our work is done. To the extent rail safety concerns arise, or the possibility of this project providing bona fide passenger service comes to fruition, we have ample jurisdiction to handle those eventualities without insisting that the Wine Train is now a public utility. In our view, for issues of local impact, such as construction of stations along the line that allow tourists to embark or disembark, local jurisdictions should have the strongest voice in determining what further operations the Wine Train may engage in.

Just because the precursor of this Commission is the Railroad Commission doesn't mean that we should regulate what is essentially a restaurant on wheels.

**/s/ SUSAN P. KENNEDY**

Susan P. Kennedy  
Commissioner

**/s/ MICHAEL R. PEEVEY**

Michael R. Peevey  
Commissioner

San Francisco, California  
October 2, 2003